IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 376 OF 2004

Shri Manik Shankar Shinde ... Appellant
(Ori. Defendant No.5)

V/s

Mrs. Shamal Sauidagar Gole & ors. ... Respondents
(Respondent No.1 is the Original Plaintiff and Resp. Nos.2 to 6B are Ori.Def.Nos.1 to 4 & 6, 6A & 6B respectively.)

Mr. R.V.Bansode for the appellant.

None for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 17TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the District Judge, Solapur dated 4.11.2003 allowing the appeal and setting aside the order passed by the Joint Civil Judge, Jr.Divn., Madha dated 31.12.1998 dismissing the suit of the plaintiff for partition.

2. I have heard the learned counsel for the appellant at length. Perused the record.

The plaintiff filed the suit for partition and separate possession of her share in the ancestral properties from the defendants. It is the case of the plaintiff that she was minor at the time of execution of certain sale deed in favour of defendants 3 and 4 by defendants 1 and 2, which sale was not for legal necessity. However, the learned Trial Judge came to the conclusion that the impugned sale was for legal necessity to defendants 3 and 4 and, therefore, the sale deed dated 27.7.1990 in favour of defendant No.5 executed by defendants 3 and 4 of the suit properties was binding on the share of plaintiff and as such the suit came to be dismissed.

The appeal was carried to the District Court. The learned District Judge heard both sides and came to the conclusion that the plaintiff had in fact 2/9 share in the suit property. The learned lower appellate Court Judge also proceeded to determine the shares of other parties involved in the suit and the suit came to be decreed accordingly. Hence the present appeal.

3. At the outset, it may be noted that there is absolutely no substantial question of law involved in the dispute and the issues involved in the dispute are pure questions of facts. It is evident that, at the

time of execution of the impugned sale deed, the plaintiff was minor. It is brought to my notice that her signature was obtained on the sale deed. However, it is needless to mention that obtainance of minor's signature as consenting party cannot be held to be legal and, therefore, the finding recorded by the learned lower appellate Court Judge that the sale executed at the foot of the sale deed is not binding on the plaintiff, has to be accepted.

4. Time and again, the Apex Court has observed that the issues of fact determined by the lower appellate Court being last Court of fact, has to be accepted though erroneous and this Court under Sec. 100 of the C.P.C. cannot go into the aspect of re-appreciation of the evidence especially when the lower appellate Court is found to have determined the entire legal as well as factual issues in correct and proper manner.

5. In the result, I do not see any merit in the appeal and appeal stands dismissed. Consequentionly, the Civil Application No. 346 of 2004 also stands dismissed.

(P.V. Kakade, J.)